

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Petition for Declaratory Ruling that ) WC Docket No. 07-361  
AT&T's Phone-to-Phone IP Telephony Services )  
Are Exempt from Access Charges )  
  
TO Wireline Competition Bureau

**COMMENTS OF THE WESTERN ALLIANCE**

**THE WESTERN ALLIANCE**

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### Summary

The Western Alliance opposes AT&T Corp.'s ("AT&T's") petition for a declaratory ruling that AT&T's "phone-to-phone" Internet Protocol ("IP") telephony services are exempt from access charges.

AT&T's "phone-to-phone" IP telephony service is a telecommunications service that is functionally identical to circuit-switched, long distance toll telecommunications service. End users place and receive calls in the same manner for both services. Likewise, the two services use the very same incumbent local exchange carrier ("ILEC") facilities and services, and impose the same originating and terminating demands and costs upon local exchange networks. The only "difference" is that AT&T can elect to route its "phone-to-phone" IP telephony calls between points on its own network via the IP protocol rather than the SS7 network protocol.

The predominant impact of AT&T's proposed exemption will be to create a gaping loophole that allows AT&T and other interexchange carriers ("IXCs") to evade payment of access charges for most or all of their toll traffic.

The petition constitutes another AT&T attempt to use ILEC local exchange network facilities virtually for free, so that it can continue to invest its capital in almost everything but local exchange facilities. If AT&T can avoid paying for its use of the local network, the incentives for ILECs to invest in the construction and upgrade of expensive local exchange facilities will be further reduced. In the long run, this will have a major adverse impact upon the availability and quality of the facilities needed to originate and terminate most voice and data traffic.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	!	
	)	
Petition for Declaratory Ruling that	)	WC Docket No. 02-361
AT&T's Phone-to-Phone IP Telephony Services	)	
Are Exempt from Access Charges	)	
TO: Wireline Competition Bureau		

**COMMENTS OF THE WESTERN ALLIANCE**

The Western Alliance, by its attorney, hereby opposes AT&T Corp.'s ("AT&T's") petition for a declaratory ruling that AT&T's "phone-to-phone" Internet Protocol ("IP") telephony services are exempt from access charges. See Public Notice (Wireline Competition Bureau Seeks Comment On AT&T's Petition For Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges), WC Docket No. 02-361, DA 02-3184, released November 18, 2002.

As described in AT&T's petition<sup>1</sup>, its "phone-to-phone" IP telephony service is functionally identical to circuit-switched, long distance toll telecommunications service. Calls are originated and terminated over local exchange network facilities. Calls are initiated by the calling party by dialing the very same "1" prefix, three-digit area code and seven-digit local telephone number ("1-" dialing) used for decades to place long distance toll calls. Calls are delivered to, and answered by, called parties in the very same manner as long distance toll calls. The sole "difference" is that AT&T may elect to route certain calls between points on its own interexchange network by using the IP protocol rather than the SS7 network protocol. However, from the standpoint of end users, there are no

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<sup>1</sup>See, e.g., AT&T Petition at 18-19.

perceptible or distinguishable differences in the placement, receipt or quality of the AT&T "phone-to-phone" IP telephony calls and long distance toll calls. Likewise, from the standpoint of incumbent local exchange carriers ("ILECs"), there are no differences in the facilities used, services provided or costs incurred to originate and terminate AT&T "phone-to-phone" IP telephony calls and long distance toll calls.

If adopted, AT&T's proposed exemption will create a massive and unfair new loophole that will allow AT&T and other interexchange carriers ("IXCs") to evade payment of access charges for an ultimately unlimited portion of their toll traffic. This loophole will permit AT&T and other IXCs to game the system merely by electing unilaterally to route their toll traffic between points on their own network via the IP protocol rather than the SS7 network protocol. AT&T understates the potential size and impact of its proposed loophole by claiming that IP telephone services currently constitute "only" between one percent (1%) and five percent (5%) of interexchange calling (AT&T Petition, p. 27). However, if the requested exemption is granted, AT&T and other interexchange carriers will have a major incentive to evade lawful access charges by using the IP protocol to route most or all of their toll traffic.

The AT&T Petition is another in a series of AT&T attempts to use ILEC local exchange network facilities without paying fair compensation. Whereas AT&T has elected to invest in cable television, computer and other ventures rather than constructing its own local exchange facilities, it has been a vigorous advocate of access charge reduction and the shift of ILEC cost recovery from access charges to universal service programs. However, during recent years, the Commission's reductions of the access charges claimed by AT&T to be "inflating" its toll rates have been followed by little or

no decreases (and, in fact, some increases) in AT&T's residential toll rates. Likewise, AT&T's primary response to recent Commission shifts of ILEC cost recovery from access charges to universal service support was to propose changes that would minimize the universal service contributions of AT&T and other interexchange carriers.

In both the short and long run, adoption of the proposed exemption and other AT&T ploys to avoid paying for its use of the local exchange network will eliminate or reduce further the incentives for ILECs to invest in the construction and upgrade of local exchange facilities. Why should ILECs continue to invest in expensive local network facilities when AT&T and other large carriers can originate and terminate their traffic on these local facilities virtually for free? Why should AT&T and other large carriers be afforded virtually free access to local network facilities when they elect to invest their capital in other facilities and businesses? This lack of incentive to invest in expensive "last mile" facilities (or, in rural areas, "last 10-to-50 mile" facilities) ultimately will have major adverse impacts upon the availability and quality of the facilities needed to originate and terminate most voice and data traffic.

### **The Western Alliance**

The Western Alliance is a consortium of the member companies of the Western Rural Telephone Association and the Rocky Mountain Telecommunications Association. It represents about 250 rural ILECs operating west of the Mississippi River.

Western Alliance members are generally small ILECs serving sparsely populated, high-cost rural areas. Most members serve less than 3,000 access lines overall, and less than 500 access lines per exchange. Their revenue streams differ greatly in size and composition from those of the price cap carriers. Most members generate revenues much

smaller than the national telephone industry average, and rely upon interstate access and universal service dollars for 45-to-70 percent of their revenue bases. In CC Docket No. C01-92 **iDeveloping a Unified Inter-carrier Compensation Regime**), the Western Alliance showed that substantial reductions in access revenues would force many small ILECs in the Rural West to increase their local service rates by \$50-to-\$100 or more per month.

Western Alliance members incur per-customer facilities and operating costs far in excess of the national average. Not only does their small size preclude their realization of significant economies of scale, but also they serve remote and rugged areas where the cost per loop is much higher than in urban and suburban America. Their primary service areas are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. In many of these high cost rural areas, the Western Alliance member not only is the carrier of last resort, but also is the sole telecommunications provider ever to show a sustained commitment to invest in and serve the area.

Western Alliance members are highly diverse. They did not develop along a common Bell System model, but rather employ a variety of network designs, equipment types and organizational structures. They must construct, operate and maintain their networks under a wide variety of climate and terrain conditions, ranging from the deserts of Arizona to the frozen tundra of Alaska, and from the valleys of Oregon to the plains of Kansas to the mountains of Wyoming.

Because of their significant reliance upon access revenues, Western Alliance members have a clear and substantial interest in this and other Commission proceedings that may result in significant evasion and loss of such revenues.

**AT&T's "Phone-to-Phone" IP Telephony Service Is A  
Telecommunications Service Indistinguishable From Long Distance Toll Service**

AT&T's "phone-to-phone" IP telephony service is plainly a "telecommunications service" under the definitions in Sections 3(43) and 3(46) of the Communications Act. Moreover, it is functionally identical in all relevant respects to circuit switched, long distance toll telecommunications service.

Section 3(46) of the Act defines "telecommunications service" as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. In turn, Section 3(43) of the Act defines "telecommunications" as the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received.

As described in its Petition, AT&T's "phone-to-phone" IP telephony service is plainly a "telecommunications service" and not an "information service." It transmits information (e.g., voice conversations) of the customer's own choosing between or among points selected by the customer without any net change in form or content of that information as sent or received. It is offered and provided to members of the public for a fee. In other words, AT&T's "phone-to-phone" IP telephony service provides only a transparent transmission path, and does not change the form or content of the information. It does not offer a "capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications" -- that is, it is not an "information service" under the definition in Section 3(20) of the Act.



As a telecommunications service, AT&T's "phone-to-phone" IP telephony service is functionally identical to long distance toll telecommunications service. The AT&T service is held out as providing long distance voice telephony service. It allows customers to place calls in the very same way that they place long distance toll calls -- that is, by employing "1A" dialing to call telephone numbers assigned in accordance with the North American Numbering Plan and associated international agreements. It originates and terminates calls over the very same ILEC local exchange network facilities used to originate and terminate long distance toll calls. The only "difference" is that AT&T uses the IP protocol to route "phone-to-phone" IP telephony calls between points on its own network rather than the SS7 network protocol used to route traditional long distance toll calls. This "difference" in protocol selection has no perceptible impact upon the placement, receipt or quality of calls for the normal end user. In fact, because AT&T makes the SS7-to-IP protocol conversion on its own network, it appears that both AT&T's customers and those with whom they communicate may use the same customer premises equipment ("CPE") that they use to place and receive ordinary touch-tone calls over the public switched telephone network.

In sum, no matter how hard AT&T may try to obfuscate the issue, there is no relevant difference between its "phone-to-phone" IP telephony service and traditional long distance toll service. They are functionally identical telecommunications services that use the local exchange network in the very same manner and that impose the very same demands and costs upon the local exchange network. Therefore, AT&T's "phone-to-phone" IP telephony service should be subject to the very same regulatory and access charge obligations as long distance toll service.

**The Commission Should Not Create A Loophole  
That Allows IXCs To "Game" The System To Evade Lawful Access Charges**

Exemption of AT&T's "phone-to-phone" IP telephone service from the access charges paid by providers of functionally identical long distance toll service will create a gaping loophole that will allow AT&T and other IXCs to evade lawful access charges. Merely by electing to route major portions of their long distance traffic between points on their own networks via the IP protocol rather than the SS7 network protocol, A&T and IXCs will be able to use the local exchange networks of ILECs virtually for free

It does not appear to be very difficult for AT&T to route toll traffic on its network via the IP protocol. Moreover, the recent pace of advances in IP technology make it likely that any existing problems will be resolved in the foreseeable future. Hence, notwithstanding AT&T's assertion that IP telephone services currently constitute "only" 1% to 5% of interexchange calling (Petition, p. 27), these percentages can grow rapidly and significantly during the immediate future.

AT&T's petition admits that it is currently terminating much of its "phone-to-phone" IP telephony traffic via **local** business lines and reciprocal compensation trunks furnished by ILECs to competitive local exchange carriers ("CLECs") for the exchange of **local** traffic<sup>2</sup>. In other words, AT&T is already "gaming" the system by using local lines not intended or priced to furnish interexchange access services to terminate its long distance toll traffic. If the requested access charge exemption is granted, AT&T and other IXCs will use the IP protocol as much as possible for their internal network routing if it exempts them from payment of access charges. This manipulation will deprive

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<sup>2</sup> Given that the Commission has required ILECs to provide CLECs with reciprocal compensation trunks at very low rates for the interconnection of **local** traffic, AT&T and other IXCs should be prohibited from using these **trunks** to terminate their long distance toll traffic.

ILECs of fair and adequate compensation for the use of their local exchange facilities by IXCs.

**Grant Of The Proposed Exemption  
Will Discourage Investment In Local Exchange Facilities**

Access charges constitute a just and reasonable payment by IXCs and others for their use of ILEC local exchange networks for the origination and termination of their traffic. Moreover, the revenues received by ILECs from access charges are necessary for the operation and upgrade of the local exchange network. Even after the recent modification of the access charge system in the Commission's MAG Order,<sup>1</sup> the small ILECs participating in the National Exchange Carrier Association ("NECA") pools still depend upon interstate access charges for approximately \$776 million of their revenues.

Local exchange ("last mile") facilities remain the most expensive and capital-intensive portion of the public telecommunications network. Particularly in the rural areas served by Western Alliance members, low population density and rugged terrain result in very long and expensive loops. Frequently, the "last mile" is really the "last 10-to-50 miles." The low population density and lack of significant scale economies also produce very high per-customer switching costs because many rural end office switches serve only hundreds of customers (rather than thousands or tens of thousands of customers served by urban end offices).

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<sup>1</sup> See Second Report And Order **And Further Notice Of Proposed Rulemaking** In CC Docket Nos. 00-256, Fifteenth Report And Order In CC Docket No. 96-45, And Report And Order In CC Docket Nos. 98-77 And 98-166 (Multi-Association Group (**MAG**) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers), FCC 01-304 released November 8, 2001 ("MAG Order").

Local exchange facilities continue to be essential For origination and termination of a broad range of telecommunications and information services Yet. AT&T and its fellow IXCs have largely refused to invest in or otherwise make any discernible or sustained attempt to construct or acquire their own local exchange facilities. Disregarding the hopes of the authors of the 1996 Act. AT&T has elected to invest instead in projects such as cable television. computers, and interexchange facilities. In fact. AT&T recently has sold or spun off the cable television and wireless facilities that it might have been able to upgrade and use to furnish local exchange services.

Having decided to leave to others the construction, operation. maintenance and upgrade of the expensive local exchange facilities necessary for the origination and termination of its traffic. AT&T must pay a just and reasonable price for its use of such facilities This fair price is comprised of the access charges that have been reviewed and approved by the Commission and state public utility commissions.

Notwithstanding AT&T's repeated but unsubstantiated references to "above cost and inefficient access charges." the Commission already has slashed access charge rates to remove what AT&T and others have characterized as "implicit subsidies " From the adoption of the 1996 Act to the issuance of the CALLS Order in May 2000. the Commission reduced the interstate access charges paid by AT&T and other IXCs by an estimated \$3.2 billion News Release (FCC Reduces Access charges **By \$3.2 Billion**; Reductions Total \$6.4 Billion Since 1996 Telecommunications Act), released May 31, 2000 In the CALLS Order itself, the Commission slashed *the* interstate access charges paid by AT&T and other IXCs to large ILECs by another \$3.2 billion. Finally, the

Commission's MAG Order cut the interstate access charges paid by AT&T and other IXC's to rural and other non-price cap ILECs by \$727 million, and mandates a further reduction of \$65 million in July 2003. However, despite AT&T's repeated claims during the Commission's 1996-2001 access "reform" proceedings that "above cost and inefficient" access charges were preventing it from decreasing its toll rates and despite AT&T's promises during the CALLS proceeding to reduce its toll rates, AT&T's residential toll customers have received little or no rate relief in response to these substantial access cost reductions. In fact, immediately following the adoption of the CALLS Order, AT&T actually announced (and then withdrew under pressure) substantial residential toll rate increases. NEWS Release (Statement of FCC Chairman William F. Kennard Regarding AT&T), released June 7, 2000.

If AT&T and other IXC's are permitted to evade just and reasonable access charges by routing their toll traffic via the IP protocol, the access revenues lost by ILECs will discourage investment in local exchange facilities. Particularly in rural areas, IXC evasion of a major portion of the approximately \$776 million of remaining interstate access revenues cannot readily be remedied by increases in local service rates or increases in federal universal service support. Rather, at a time when rural carriers have been rocked by revenue losses from the Global Crossings and WorldCom bankruptcies and uncertainties regarding the future availability of federal universal service support, access charge evasion will eliminate much of the remaining incentive for rural ILECs to invest in local exchange facilities.

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<sup>1</sup> Sixth Report And Order In CC Docket Nos. 96-262 and 94-1, Report And Order In CC DOocket No.99-249, Eleventh Report And Order In CC Docket No 96-45 (Access Charge Reform), FCC 00-193, released May 31, 2000 ("CALLS Order")

Why should rural and other ILECs continue to invest in expensive local exchange upgrades: (a) when IXCs, information service providers and others can **use** their local exchange facilities virtually for free; (b) when they lack state commission approval and/or the economic capability to significantly increase their local service rates; and (c) when the availability and amount of future universal service support is uncertain? The answer is that local exchange investment has already slowed considerably (as evidenced, in part, by the recent financial problems of local exchange equipment vendors such as Lucent and Nortel) Commission adoption of additional access charge exemptions and loopholes can only worsen an already uncertain and unfavorable investment climate.

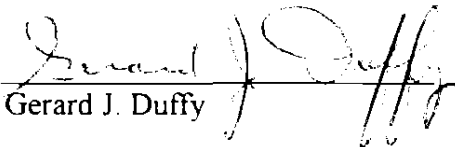
In the long run, these reduced local exchange investment incentives will have major adverse impacts upon the availability and quality of the facilities needed to originate and terminate most telecommunications traffic. Notwithstanding the many recent advances in telecommunications technology, local exchange facilities remain essential for the origination and termination of a most telecommunications and information services, and will continue to be so for many years.

### **Conclusion**

The Commission should deny AT&T's petition, and refuse to exempt its "phone-to-phone" IP telephone service from access charges. The AT&T service is a telecommunications service that is functionally identical to long distance toll *telecommunications* service. If AT&T and other IXCs are permitted to evade access charges merely by routing traffic between points on their own networks via the IP protocol, they will use this loophole extensively. **As** a result, ILECs not only will be

deprived of millions of dollars of lawful access revenues, but also will have little incentive to invest in the construction and upgrade of expensive local networks that other carriers can use for free.

Respectfully submitted,  
**THE WESTERN ALLIANCE**

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Dated December 18, 2002

**CERTIFICATE OF SERVICE**

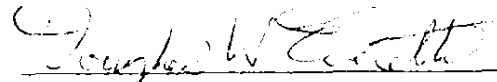
I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing Comments were sent by hand delivery on this 18<sup>th</sup> day of December, 2002 to the persons listed below:

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